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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,258	04/08/2004	Wilfried Kolbe	1887.1004	7516

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EXAMINER

PETERSON, KENNETH E

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/820,258	Applicant(s) KOLBE ET AL.	
	Examiner Kenneth E. Peterson	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8apr04</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election without traverse of group I and Species A in the reply filed on 06/06/06 is acknowledged. Applicant indicated that claims 1-4 read on the elected species. However, claims 3 and 4 (having cams) are clearly drawn to non-elected Species B.

Claims 3 and 4 are hereby withdrawn. Non-elected claims 5-14 have been cancelled by Applicant.

2. The abstract of the disclosure is objected to because of the inclusion of legal phraseology, such as "means". Correction is required. See MPEP § 608.01(b).

3. Claim 1 is objected to because of the phrase "mechanism to transport of the continuous material" is grammatically incorrect.

Appropriate correction is required.

4. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what elements the claims terms are referring to. Claim 1 has "eccentric rollers", but the rollers themselves are not eccentric. Claim 2 recited that the rollers are mounted on the eccentrics, but not that the eccentrics are part of the rollers. Claim 1 recites a "positioning device". Looking to the spec, it appears that the positioning device employs the eccentrics. Applicant needs to employ more careful

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language to set forth the rollers, the eccentrics and the positioning device, such that the scope of each term is clear.

At the end of claim 1, the phrase "elements adapted to be driven by a selected one of individually and jointly". It is not clear if this is intended to cover devices that are "*only* individually or *only* jointly" or "*only* switchable between individually and jointly".

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kuckhermann '894, who shows a tear-off device that employ's an eccentric (23) that has plural rollers (7,8,9) mounted thereto. As best can be understood, the term "eccentric rollers" is interpreted to include rollers that are driven by an eccentric as seen in Kuckhermann.

Kuckhermann's rollers are adapted to be driven jointly.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 2, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuckhermann '894 in view of Hatchell et al.'746.

Kuckhermann shows a tear-off device having most of the recited limitations, as discussed above, except there is just one eccentric, as opposed to "eccentrics" (claim 2), and the eccentric is external (see cover figure) as opposed to internal.

However, Hatchell shows that it is well known to drive a single roller (46) with an internal eccentric (at the top of link 50). It would have been obvious to one of ordinary skill in the art to have provided an internal eccentric for each of Kuckhermann's rollers, as taught by Hatchell, since they are an art recognized equivalent known for the same purpose.

9. Made of record but not relied on are two references to Achelpol showing pertinent tear-off devices.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 571-272-4512. The examiner can normally be reached Mon-Thurs, 7:30AM-5PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KP

July 12, 2006



KENNETH E. PETERSON
PRIMARY EXAMINER